No. 12630

United States
Court of Appeals
for the Ninth Circuit.

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

CLARA-VAL PACKING COMPANY and CANNERY WAREHOUSEMEN, FOOD PROCESSORS, DRIVERS AND HELPERS, LOCAL UNION No. 679, AFL.,
Respondents.

SUPPLEMENTAL
Transcript of Record

Petition for Enforcement of Order of the National Labor Relations Board.

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.

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Respondents.

MOTION FOR LEAVE TO FILE ANSWER TO PETITION OF THE NATIONAL LABOR RELATIONS BOARD FOR ENFORCEMENT OF ITS ORDER

Comes Now respondent Cannery Warehousemen, Food Processors, Drivers and Helpers, Local Union No. 679, AFL., and moves the Court by its attorney, I. B. Padway, for leave to file its answer in the above-entitled cause, copy of which is attached hereto.

That the reason for its said request is that an employee of the respondent inadvertently mislaid the notice served upon the respondent, and that the failure to file said answer was first called to the attention of the respondent by its attorney when the transcript of the record disclosed the failure to file said answer.

/s/ I. B. PADWAY.

Upon motion of I. B. Padway, attorney for respondent Cannery Warehousemen, Food Processors, Drivers and Helpers, Local Union No. 679, AFL., seeking to file its answer to the petition herein, and the Court being apprised of all the facts and circumstances surrounding said motion, makes the following order:

Permission is now granted to file the original of the attached answer.

/s/ WILLIAM HEALY,
Judge of the United States Court of Appeals for the Ninth Circuit.

/s/ HOMER T. BONE,
Circuit Judge.

/s/ WALTER L. POPE,
Circuit Judge.

[Title of Court of Appeals and Cause.]

ANSWER TO PETITION OF THE NATIONAL LABOR RELATIONS BOARD FOR ENFORCEMENT OF ITS ORDER

Comes Now the respondent Cannery Warehousemen, Food Processors, Drivers and Helpers, Local Union No. 679, AFL., and for answer to the petition of the National Labor Relations Board for the enforcement of its order against this respondent, admits, denies, qualifies and alleges as follows:

I.

Admits Paragraph 1 of the petition herein.

II.

Denies Paragraph 2 of the petition herein, and in this respect this answering respondent alleges that the findings of fact and conclusions of law made by the petitioner on December 16, 1949, were contrary to law then and there existing, and contrary to the express terms of the Labor Management Relations Act, being public law 101 enacted by the Eightieth Congress as of June 23, 1947.

III.

Expressly denies that the order of the National Labor Relations Board as contained in Paragraph 2 of the petition herein, was based upon any proper findings of fact and conclusions of law.

Wherefore respondent prays that said petition be dismissed.

/s/ I. B. PADWAY,

Attorney for Respondent Cannery Warehousemen, Food Processors, Drivers and Helpers, Local Union No. 679, AFL.

State of California
County of Santa Clara—ss.

Edward Felley, being first duly sworn, deposes and says: That he is the Secretary of the respondent Cannery Warehousemen, Food Processors, Drivers and Helpers, Local Union No. 679, AFL., and that he makes this verification on its behalf; that he has

read the foregoing answer to petition of the National Labor Relations Board for enforcement of its order and knows the contents thereof; that the same is true of his own knowledge except as to those matters therein stated on information and belief and as to them he believes them to be true.

/s/ EDWARD FELLEY.

Subscribed and sworn to before me, this 5th day of October, 1950.

[Seal] /s/ HELEN HUNT,
Notary Public in and for the County of Santa Clara, State of California.

[Endorsed] Filed October 5, 1950.

No. 12630

In the United States Court of Appeals for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

CLARA-VAL PACKING COMPANY

AND

CANNERY WAREHOUSEMEN, FOOD PROCESSORS, DRIVERS AND HELPERS, LOCAL UNION NO. 679, AFL, RESPONDENTS

ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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ISADORE J. GROMFINE,
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CLARA-VAL PACKING COMPANY
AND
CANNERY WAREHOUSEMEN, FOOD PROCESSORS, DRIVERS AND HELPERS, LOCAL UNION NO. 679, AFL, RESPONDENTS

ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

JURISDICTION

This case is before the Court on petition of the National Labor Relations Board pursuant to Section 10 (e) of the National Labor Relations Act, as amended,[1] hereafter called the Act, for enforcement of its order issued against Clara-Val Packing Company, hereafter called Clara-Val, and the Cannery Warehousemen, Food Processors, Drivers and Helpers, Local Union

[1] 61 Stat. 136, 29 U. S. C. Supp. III, Secs. 151, *et seq.* Relevant portions of the Act appear in Appendix A, *infra,* pp. 25-28.

No. 679, AFL, hereafter called the Union, respondents herein, on December 16, 1949, following the usual proceedings under Section 10 of the Act. This Court has jurisdiction of these proceedings under Section 10 (e) of the Act, the unfair labor practices having occurred within this judicial circuit at Clara-Val's plant at Morgan Hill, California.[2] The Board's Decision and Order (R. 5-17)[3] is reported at 87 NLRB No. 120.

STATEMENT OF THE CASE

I. The Board's Findings of Fact

The Board's findings of fact are based on stipulation entered into by the parties (R. 43). The terms of employment at the Clara-Val plant were governed in June, 1948, by a "Master" collective bargaining contract (*infra,* pp. 29-31).[4] This master contract, adopted by Clara-Val and the Union as their own, had been executed by the California Processors and Growers, Inc., a group of California cannery operators of which Clara-Val is not a member, and the California State Council of Cannery Unions, AFL, of which the

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[2] Clara-Val, a California corporation, is engaged in the business of processing and shipping fruit. In the last half of 1948 its sales were approximately $400,000 in value, 90 percent of which was shipped outside the State of California. Clara-Val concedes that it is engaged in commerce within the meaning of the Act; accordingly, no jurisdictional question is presented. (R. 24-25; 62-64.)

[3] References to portions of the printed record are designated "R." Those references preceding the semicolons are to the Board's findings and those following semicolons are to the supporting evidence.

[4] The pertinent provisions of the collective bargaining contract between Clara-Val and the Union are printed in Appendix B (*infra,* pp. 29-31) to this brief because the court's printer did not include them in the printed record. The contract was introduced into evidence as Union Exhibit No. 1 (R. 43-44, 67-68), and was included in the Board's designation of the parts of the record to be printed.

Union is a part (R. 25-26; 67, 74). It had been entered into originally on June 10, 1941, and had been amended on six occasions prior to the occurrences here involved (R. 26; *infra,* p. 29). The most recent amendment was executed on May 20, 1947, predated to March 1, 1947, in accordance with the terms of the contract (R. 26; 72, *infra,* p. 31). It included a clause which made union membership in good standing a condition of continued employment (R. 6, 26; 68, *infra,* p. 29). The duration of the contract, as amended on May 20, 1947, was provided for in the following clauses (*infra,* pp. 30-31):

Section XV

Term of Agreement

(a) The exclusive collective bargaining relationship provided by this Agreement and effective from and after March 1st, 1947 shall continue without expiration date until:

1. Terminated by written notice served by either party upon the other as provided in Paragraph (a) Section XII [5] or in Paragraph (b) of this Section, or

2. Terminated by written notice served by either party upon the other as provided in Section XVI (b) 2.

(b) The anniversary date of this Agreement shall be March 1st of each year. If either party desires to terminate the exclusive collective bargaining relationship and this Agreement on any

[5] Paragraph (a) of Section XII provides for termination by one party if the other party should engage in a strike, lockout or slowdown not provoked by contract violations of the opposite party. *Infra,* pp. 29-30.

anniversary date, written notice to such effect shall be served between February 16th and March 1st of the year then current.

Section XVI

Procedure for Modification

(a) In the event either party desires to modify any of the terms of this Agreement or to establish new or different terms or conditions, written notice specifying in exact language the changes desired shall be served within the sixteen (16) day period December 16th to December 31st inclusive. The months of January and February following service of the above notice shall be devoted to negotiations and if the parties are in complete agreement all changes mutually agreed upon shall become effective on March 1st and shall remain effective for not less than twelve (12) months thereafter.

(b) If any of the matters under negotiation are still in dispute on March 1st, either of the following actions may be taken:

1. The parties may mutually agree upon an additional period or periods of negotiation and the changes finally agreed upon shall become effective on a mutually acceptable date and shall remain effective until at least the following March 1st.

2. Either party by written notice on or after March 1st may terminate the collective bargaining relationship and this Agreement.

(c) If, during the December 16th to December 31st period, neither party serves notice of a desire to modify any of the terms of this Agreement or to

> establish new or different terms or conditions, then this Agreement shall continue for an additional period of at least twelve (12) months after the next March 1st anniversary date.

The first specified anniversary date of the contract, March 1, 1948, passed without notice for termination or modification having been given by either Clara-Val or the Union (R. 26; 72).

About the middle of June 1948, the Union found that one of its members, employee Nora Stiers, after completing her work day at Clara-Val, worked additional hours in a nearby food processing plant against which the Union was conducting a strike (R. 6, 26; 65, 68-69). In order to gain admittance to the struck plant, employee Stiers was forced to cross a Union picket line of approximately 12 persons (R. 6, 26; 65, 69). Upon discovering this practice by Stiers, the Union's executive board fined her $200 for acting in violation of the Union's constitution, which sum was to be reduced to $25 upon her promise to refrain from further violations (R. 26-27; 69). Employee Stiers refused to pay either sum or to make any such promise (R. 27; 69). Thereupon the Union informed Clara-Val that as a result of employee Stiers' actions she was no longer a union member in good standing, and demanded that she be discharged in accordance with the terms of the collective bargaining contract (R. 6, 27; 65, 69, 70, 71). A work stoppage and picket line were threatened if Clara-Val did not comply (R. 6, 27; 65, 71). Pursuant to the Union demand, Clara-Val discharged employee Stiers on June 24, 1948 (R. 6, 27; 65, 69).

II. The Board's Conclusions of Law

On the basis of the foregoing facts the Board concluded that Clara-Val had discharged employee Stiers in violation of Section 8 (a) (1) and 8 (a) (3) of the Act, and that the Union had violated Section 8 (b) (2) of the Act by causing her discharge (R. 7). The compulsory union membership clause of the collective bargaining contract was held to be invalid, since no authorization to execute a union security provision had been obtained pursuant to Section 9 (e) of the Act (R. 6-7; 66, 76). Although the compulsory membership clause had been entered into prior to the enactment of the 1947 amendments to the Act, the Board held that it had been "renewed or extended" within the meaning of Section 102 of the Act by the passing of the automatic renewal date of March 1, 1948, and therefore was subject to the 1947 amendments concerning union security (R. 6, 29). The Board further concluded, one member dissenting, that the Union's conduct in causing the discharge of employee Stiers restrained and coerced employee Stiers in the exercise of her right under Section 7 of the Act to refrain from engaging in union activity, and therefore constituted a violation of Section 8 (b) (1) (A) (R. 7-10).

III. The Board's Order

The Board's order requires both Clara-Val and the Union, jointly and severally, to make whole employee Stiers for the amount of her loss of earnings resulting from her discharge (R. 13-14).

In addition, the Board's order requires Clara-Val to cease and desist from encouraging membership in the

Union by discriminating in regard to the hire or tenure of employment of its employees, and from in any other manner interfering with, restraining, or coercing its employees in their right to refrain from engaging in union activities (R. 10-11). Affirmatively Clara-Val is ordered to offer employee Stiers reinstatement, and to post appropriate notices (R. 11).

Furthermore, the Board's order requires the Union to cease and desist from: (1) causing, by threat of strike, Clara-Val to discriminate against its employees because they are not union members in good standing, except in accordance with Section 8 (a) (3) of the Act; from (2) in any other manner causing or attempting to cause Clara-Val to discriminate against its employees in violation of Section 8 (a) (3) of the Act; and from (3) restraining or coercing Clara-Val's employees in the exercise of their right to refrain from engaging in union activities (R. 12-13). Affirmatively the Union is ordered to post appropriate notices (R. 13).

SUMMARY OF ARGUMENT

The discharge of employee Stiers, accomplished by Clara-Val upon the demand of the Union because employee Stiers had crossed a union picket line, violated the job protection afforded by the Act to employees who refrain from engaging in union activities and who are expelled from union membership therefor. The closed-shop contract in existence between Clara-Val and the Union does not justify this discriminatory discharge, since, although entered into prior to the enactment of the 1947 amendments to the Act which proscribe such a contract, it was nonetheless "renewed

or extended'' within the meaning of Section 102 to the Act before the discharge occurred, and therefore was no longer exempt from the impact of the amendments to the Act. The ''renewal or extension'' of the contract resulted from the operation of an automatic renewal clause, contained in the contract, which provided that unless notice was given by one of the parties within a prescribed time, the contract was to bind the parties for an additional period of one year. Since neither party served the other with the prescribed notice subsequent to the enactment of the amendments to the Act, the contract automatically ''renewed or extended'' itself upon the date provided for therein, which occurred before employee Stiers' discharge.

The Board's holding that the contract in this case was subject to the union security provisions of the amendments to the Act comports with legislative intent. Congress delayed the application of the amendments' union security provisions to correspond with the earliest regular interval that parties in a collective bargaining relationship could, without disruption to the stability of industrial relations, accommodate their agreement to the amendments. Since a specified period was set aside in the contract in the instant case for its renegotiation, the parties had full opportunity to conform the contract to the amendments. The renegotiation period had passed at the time of employee Stiers' discharge, and the contract was therefore controlled by the amendments within Congressional intendment.

In addition to violating Section 8 (b) (2) of the Act in causing the discriminatory discharge, the Union has also violated Section 8 (b) (1) (A) in that it has ''re-

strained and coerced'' employee Stiers in her right to refrain from engaging in union activities. No clearer illustration of ''restraint and coercion'' of an employee may be given than the deprivation of her employment.

ARGUMENT

I. The Board Properly Concluded That the Discharge of Employee Stiers by Clara-Val Upon the Demand of the Union Constituted Violations of Section 8 (a) (1) and (a) (3) of the Act by Clara-Val and of Section 8 (b) (2) by the Union

A. *The Statutory Provisions*

By the 1947 amendments to the Act, Section 8 (a) (3) makes it an unfair labor practice for an employer to discharge an employee because of expulsion from union membership unless the union has a properly authorized union shop contract with the employer, and the expulsion results from nonpayment of dues. One of the requisites of a valid union shop agreement is that a majority of the employees in the unit, in accordance with a referendum procedure provided for in Section 9 (e) (1) of the Act, authorize the union to execute a union shop contract. Similarly, by Section 8 (b) (2), a labor organization commits an unfair labor practice if it causes an employer to discharge an employee in violation of Section 8 (a) (3).

In this case, the discharge of employee Stiers was effectuated at the Union's insistence for reasons other than the nonpayment of dues, and the compulsory membership clause of the contract between Clara-Val and the Union had not been entered into in accordance with the provisions of the Act, in that no election authorizing its execution had been held (*supra,* pp. 5; 66, 76). There-

fore, both Clara-Val and the Union committed unfair labor practices in having employee Stiers discharged, unless the collective bargaining agreement pursuant to which the discharge was made was exempted from the union security regulations provided by the Act.

Clara-Val and the Union contended before the Board that the validity of their contract, insofar as it concerns union security, was preserved by Section 102 of the Act, which postpones the effective date of certain of the 1947 amendments. The relevant part of Section 102 of the Act is as follows:

> ". . . the provisions of section 8 (a) (3) and section 8 (b) (2) of the National Labor Relations Act as amended by this title shall not make an unfair labor practice the performance of any obligation under a collective bargaining agreement entered into prior to the date of the enactment of this Act, or (in the case of an agreement for a period of not more than one year) entered into on or after such date of enactment, but prior to the effective date of this title, if the performance of such obligation would not have constituted an unfair labor practice under section 8 (3) of the National Labor Relations Act prior to the effective date of this title, *unless such agreement was renewed or extended subsequent thereto.*" [Emphasis supplied.]

The amendments of the Act were passed on June 23, 1947, and became effective on August 22, 1947. The collective agreement between Clara-Val and the Union was entered into on May 20, 1947, made retroactive to March 1, 1947, both dates being prior to the enactment of the 1947 amendments to the Act. While the contract's compulsory membership clause was therefore

valid at the time of its execution,[6] we shall show that it was automatically renewed or extended on March 1, 1948, when neither Clara-Val nor the Union gave notice of termination or modification of their agreement. This renewal or extension withdrew the contract from the protection of Section 102 of the Act, and therefore furnishes no justification for the subsequent discharge.

B. *The collective bargaining agreement between Clara-Val and the Union was automatically renewed or extended within the meaning of Section 102 of the Act prior to the discharge of employee Stiers*

Sections XV and XVI of the collective bargaining contract between Clara-Val and the Union, which provide for the term of the agreement and the time when modifications may be effectuated, constitute a frequently used arrangement known as an "automatic renewal clause." This familiar type of agreement normally provides that the collective bargaining contract of which it is a part shall continue for additional specified terms if no notice to the contrary is given by either party before an agreed date; hence the name "automatic renewal." These clauses are most often encountered in representation cases, where the term of a contract is important for the purpose of determining whether the proceeding is subject to the "contract bar" rule,[7] or whether, on the contrary, the time is appropriate to

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[6] Compulsory membership agreements were permitted under Section 8 (3) of the original Act.

[7] This is the name given to the rule evolved by the Board under which the Board holds that an existing contract, in the interest of stability, is for a certain period a bar to the redetermination of the employees' bargaining representative. See, Fourteenth Annual Report of the Board, pp. 22-23.

hold an election to choose a bargaining representative. The Board, in the exercise of its function of ascertaining employee representation,[8] has laid down a well established set of rules governing the time appropriate for an election in bargaining units covered by contracts containing automatic renewal clauses,[9] and in doing so has explained the attributes of an automatic renewal clause (*Little Rock Furniture Mfg. Co.,* 80 NLRB 65, 66):

> Collective bargaining practices indicate that parties to contracts containing automatic renewal clauses contemplate that the agreements are to run for successive terms but, in the event that during any current contract term, either party becomes dissatisfied with the agreement, such party will have a specified period . . . immediately prior to the end of the contract term to negotiate outstanding differences so that contractual relations will be uninterrupted.

Thus the elements of the automatic renewal clause are (1) a specified period which in ordinary circumstances is the only time that amendments to or modifications of the contract may be negotiated, (2) a specified date by which time notice must be given by either party wishing termination or modification, (3) the signification, by

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[8] See Section 9 (b) and (c) of the Act. See also, *Iob* v. *Los Angeles Brewing Co.,* 183 F. 2d 398, 404 (C. A. 9); *Fay* v. *Douds,* 172 F. 2d 720, 722 (C. A. 2); *N. L. R. B.* v. *Geraldine Novelty Co.,* 173 F. 2d 14, 17, 18 (C. A. 2); *N. L. R. B.* v. *Grace Co.,* 26 LRRM 2536, 2538-2539 (C.A. 8, September 13, 1950).

[9] See, e.g., *Mill B., Inc.,* 40 NLRB 346; *Green Bay Drop Forge Co.,* 57 NLRB 1417; *U. S. Pipe and Mfg. Co.,* 78 NLRB 15; Fourteenth Annual Report of the Board (1950), pp. 24-25.

absence of timely notice, that the contract will bind the parties for an additional specified term.

The agreement between Clara-Val and the Union contains such an automatic renewal clause. There is manifested a plain intent that the contract should run for successive terms, with either party having the option to terminate it or negotiate modifications to become effective on the anniversary date [10] of the contract. Executed to begin on March 1, 1947, the contract has a definite term of only 1 year, barring its breach. Thus Section XV of the contract states that the agreement shall continue from March 1st, 1947 without expiration until (1) terminated by notice of either party upon the breach of the other, or (2) terminated by notice of either party to take effect on the anniversary date of March 1st, following the notice (*supra,* p. 30). Under Section XVI modification of the contract likewise requires notice of at least 60 days prior to March 1st of any year, which notice is to be followed by negotiations looking toward an agreement that may be put into effect on March 1st to carry through for at least another year. Failure to give the prescribed notice signifies that the "Agreement shall continue for an additional period of at least twelve (12) months after

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[10] The term "anniversary date," as used in the contract between Clara-Val and the Union, has been established by usage and by Board terminology to refer to the time at which the new term of the contract begins by virtue of the automatic renewal clause. See, e.g., *General Electric Co.*, 77 NLRB 1198, 1199; *Memphis Butchers Ass'n, Inc.*, 72 NLRB 934, 936; *Neon Products, Inc.*, 74 NLRB 766, 768; *The Ohio River Co.*, 66 NLRB 128, 129; *Pointer-Willamette Co.*, 64 NLRB 469, 470; *Red Jacket Mfg. Co.*, 62 NLRB 740, 742; *Borg-Warner Corp.*, 58 NLRB 449, 450.

the next March 1st anniversary date." [11] Thus the contract follows the normal pattern of automatic renewal clauses. There is present the usual anniversary date before which changes or termination may not take effect, that is, the usual period during which the parties are irrevocably bound; there is present the customary specified date by which time notice must be given in order to modify or terminate; and finally, there is present the usual provision that a failure to give timely notice, which occurred in this case, operates to extend the contract for an additional defined period. The Board properly found, therefore, "that the contract provisions contained an 'automatic renewal clause'" (R. 29).

It is thus apparent that when the parties to the contract did not give notice of termination or modification at the specified period, the automatic renewal clause operated to continue the contract for an additional one year term after March 1, 1948. It became, therefore, an agreement "renewed or extended subsequent" to the enactment of the amendments within the meaning of Section 102 of the Act.[12] No qualification is attached to the words "renewed or extended." A contract term which would expire except for the operation of an automatic renewal clause is a contract

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[11] Section XVI (c) of the Contract (*supra*, p. 31). The choice of March 1st as the anniversary date is not entirely arbitrary. This contract is widely used in the California fruit packing industry, where employment is highly seasonal. The number of workers exceeds 50,000 during the summer peak, and slacks off to under 5,000 in the off season, which begins in November and ends in *March* of the following year. See *Bercut Richards Packing Co.*, 64 NLRB 133, 138-139.

[12] See Teller, Labor Disputes & Collective Bargaining, Vol. 2, 1948 Supplement, Sec. 398.73, p. 81.

"renewed or extended," particularly since those words were without doubt used by Congress with the knowledge of the existence of such clauses and the Board's treatment of them. Certainly an agreement of the parties at the outset of the contract term that their silence during a specified annual interval will be the signal for an automatic renewal and extension of their contract is no less a renewal and extension than one which is arranged a few days before the term runs out. In either case there is an agreement not to permit the contract to expire, but rather to prolong its life for at least another specified term. It is precisely this sort of prolongation of a compulsory membership clause that Section 102 expressly subjects to the regulation of the amendments to the Act. Accordingly, after March 1, 1948, the contract between Clara-Val and the Union was no longer exempt.

Before the Board, however, Clara-Val and the Union contended that, at the time of employee Stiers' discharge, their collective bargaining contract had not expired, since it had an indefinite term which in no way had been interrupted, and therefore it could not have been automatically renewed. In other words, they contend that their agreement is one for an indefinite duration, rather than one automatically renewable for successive years. The way in which this contention is developed is itself the best demonstration of the impossibility of ignoring the annual term which measures the operation of the contract. Thus Clara-Val and the Union rely on that part of their contract which reads, "this agreement . . . shall continue without expira-

tion date . . .."[13] and urge that these words give it a continuing, termless duration. The phrase they quote is lifted out of its context in the contract in a manner that eliminates its qualifications and thereby obscures its meaning. The words "without expiration date" are followed, without punctuation, by the qualifying word "until," after which several methods for terminating or modifying the contract are outlined. As we have explained, no modification or termination may take effect before the anniversary date of March 1st. Furthermore, once the date for notification of change or termination has passed without either party having given such notice, the contract cannot be altered for another twelve months. From the entirety of the contract it is thus abundantly clear that it has a very definite term, running from March 1st to March 1st of each year. In fact, there is no time during a year, barring the period subsequent to notice, at which it may be said with certainty that the contract will be effective for more than a twelve month period, beginning and ending on March 1st. Accordingly, the first term of the contract ended on March 1, 1948, prior to the discharge of employee Stiers. The failure of either party to give timely notice was the agreed signal that the contract should be automatically renewed for an additional year.

Just as Clara-Val and the Union err in contending that their contract had no definite term which could permit its automatic renewal, so are they in error in assuming that there can be no automatic renewal of a contract until after it has expired by its own terms. In other words, the contention is that unless the con-

[13] Section XV of the Contract (*supra*, p. 30).

tract specifically states it is to end at a given time and resume at a given time, it cannot be said to have been automatically "renewed or extended." But the failure of a contract explicitly to state that it ends on a certain date and simultaneously begins again if there has been no notice to the contrary is a technicality upon which the Board has never hinged its definition of an automatic renewal clause.[14] Contracts which speak in terms of continued operation from year to year, in the event of no contrary notice, have regularly been referred to as automatic renewal contracts.[15] The metaphysical question of whether a contract has a theoretical termination and instantaneous new beginning has no place in the determination of whether the parties have agreed to an automatic form of extending their collective bargaining agreement each year. The decisive factor in this type of clause is that it functions in such a manner as to continue for defined intervals unless at regular specified periods, and in accordance with the agreed procedure, one of the parties gives notice to the contrary. Clearly the contract between Clara-Val and the Union accomplishes that purpose.

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[14] Cf. *Blair Limestone Co.*, 70 NLRB 689, 691.

[15] See, e.g., *Groveton Papers Co.*, 52 NLRB 1256, 1257; *Borg-Warner Corp.*, 58 NLRB 449, 450-451; *The Narragansett Electric Co.*, 64 NLRB 1492, 1496; *Neon Products, Inc.*, 74 NLRB 766, 767, 768; *General Electric Co.*, 74 NLRB 415, 416; *Manhattan Coil Corp.*, 79 NLRB 187, 189; *Omaha Packing Co.*, 67 NLRB 304, 305; *North Range Mining Co.*, 47 NLRB 1306, 1307-1308.

C. *Congress intended that the compulsory membership provisions of 1947 amendments should apply to collective bargaining agreements following the earliest regular interval for their renegotiation or modification*

The Board's interpretation of the contract in this case fulfills the purpose underlying the amendments' regulation of union security and the deferment of that regulation for the term of existing contracts.

The compulsory membership features of the 1947 amendments to the Act were among the most important policy changes of that legislation. It was Congress' intent to eliminate the evils of the closed shop system, and to give employees the freedom to refrain from engaging in union activities without the fear of losing their jobs.[16] At the same time it was recognized that an immediate application of these changes in the Act would incur confusion and unrest in the many industries where various forms of union security were traditional and had brought stability to employer-employee relations.[17] Likewise it was necessary to give the Board an opportunity to accommodate its rules and regulations to the changes, and to train its personnel.[18] For these reasons the effective date of the amendments was postponed for 60 days following enactment,[19] and further delays were made in the application of various provi-

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[16] H. R. Rep. No. 245, 80th Cong., 1st Sess., 33-34 (1947); Sen. Rep. No. 105, 80th Cong., 1st Sess. 6-7 (1947).

[17] Sen. Rep. No. 105, 80th Cong., 1st Sess. 28 (1947); compare remarks of Senator Taft on floor of Senate, 93 Cong. Rec. 3837.

[18] Summary of differences between the Conference Agreement and the Senate bill, (Taft) 93 Cong. Rec. 6445.

[19] Section 104 of the Act.

sions. Thus the amendments were not to affect existing certifications of employee representatives or determinations of bargaining units in cases affected by collective bargaining agreements until the end of the contract period, if less than a year away.[20] Similarly, contracts containing compulsory membership clauses could be entered into between the date of enactment of the amendments and their effective date, providing these contracts did not last more than 1 year.[21] In the event compulsory membership clauses had been entered into before the date of the enactment of the amendments, as in the instant case, the amendments were to have no effect until the contract had ended, or was renewed or extended.[22]

In each case where Congress postponed an effective date, the period of delay has been tied to the term of individual bargaining agreements. Thus the principle underlying the postponements is that once a contract has run its normal term, during which changes cannot be made, it is no longer afforded an exemption from the amendment provisions dealing with certifications, bargaining units, and compulsory membership. This principle is in full harmony with the reasons for postponement, since the synchronization of changes in the Act with the expected intervals of contractual negotiations and modifications permits employers and unions to adjust their contracts to the amendments without disruption to the bargaining relationship. In the case of an agreement which calls for modification or termination

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[20] Section 103 of the Act.
[21] Section 102 of the Act.
[22] Section 102 of the Act.

upon a given date of each year, that date is the interval of time that Congress contemplated should be used for adapting the contract to the amendments. It follows that the words "renewed or extended" in Section 102 of the Act, as applied to such a contract, refer to a renewal or extension beyond the earliest terminable date as established by regular bargaining practices. Otherwise, by the simple device of remaining silent during the usual periods set aside for negotiation, parties who are satisfied with collective bargaining agreements containing regularly established terms might perpetuate indefinitely practices that openly violate some of the most important provisions Congress enacted.

To achieve this perpetuation of forbidden practices, which conflicts with the Congressional purpose, Clara-Val and the Union urge that there can be no extension of a contract until the parties have in fact caused the previously existing terms to have expired. However, as we have shown, Congress' concern with respect to delaying the effective dates of the amendments was not to have the delay coincide with the time that the parties may actually desire to end or modify their collective bargaining contracts; rather the purpose was to coincide the delay with the earliest regular opportunity of employers and labor organizations in their normal bargaining relationship to adjust their contracts to the amendments. The renewal or extension of a contract is thus to be measured from interval established for renegotiation, and not from the advent of a time when the parties may desire to avail themselves of the opportunity to renegotiate, after forestalling that event to suit their private convenience. Clearly, the existence of a

contract beyond its annual termination and modification date is an extended existence, and it is certain that such a contract has been extended beyond the time that Congress intended for the adjustment of the contract to the 1947 amendments to the Act.

In the instant case the contract between Clara-Val and the Union set aside an annual period for negotiating modifications, namely, the months of January and February, based on a notice given during the second half of December. Changes agreed upon, or termination, if desired, were to be effective from March 1st. Thus it is apparent that the contract has an annual rhythm. No disruption in the bargaining relationship between Clara-Val and the Union results from changes adopted in accordance with the prescribed procedure, which has been followed for several years. Since the parties had full and regular opportunity to accommodate their agreement to the amendments beginning mid-December and ending March 1, 1948, the expiration of that period marked the time at which the amendments were meant to apply, as provided in Section 102 of the Act. It follows that employee Stiers' discharge, occurring on June 24, 1948, was made pursuant to an invalid contract which furnishes no defense to the unfair labor practice charge.

II. The Board Properly Found That the Union Violated Section 8 (b) (1) (A) of the Act in Causing the Discharge of Employee Stiers Pursuant to an Invalid Union Security Agreement

In addition to its finding that the Union had violated Section 8 (b) (2) of the Act, the Board concluded that the Union had violated Section 8 (b) (1) (A) by caus-

ing the discharge of employee Stiers. Section 8 (b) (1) (A) provides that:

> It shall be an unfair labor practice for a labor organization or its agents (1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7 . . . .

Section 7 in turn extends to employees the right, *inter alia,* to refrain from engaging in union activities except to the extent that the right is affected by a properly authorized union shop contract. As we have shown, there was no valid union shop agreement in effect between Clara-Val and the Union at the time of employee Stiers' discharge. It follows that Section 7 of the Act guaranteed her the right to cross the Union's picket line and to work in a struck plant without being restrained or coerced. If her discharge at the Union's insistence "restrained or coerced" her in this conduct, the Board was correct in finding that the Union had violated Section 8 (b) (1) (A) of the Act.

No demonstration is required to show that no better method to restrain and coerce employees is available than the deprivation of the means of their livelihood. To employees, discharge from their employment is the ultimate in economic coercion. Working people are not free to engage in, or to refrain from engaging in "concerted activities" [23] if an unrestricted power to effect their discharges for that reason resides in an employer or a union.

Section 8 (b) (1) (A) was designed to reach "situations involving actual or threatened economic reprisals

[23] Section 7 of the Act.

and physical violence by unions or their agents against specific individuals or groups of individuals in an effort to compel them to join a union or to cooperate in a union's strike activities."[24] Thus, where intimidation of employees by a union through actual or threatened physical violence occurs, the union has violated Section 8 (b) (1) (A).[25] A union's threats of economic coercion,[26] or as in this case, their effectuation,[27] are no less violative of Section 8 (b) (1) (A).

Accordingly, where, as here, a union causes the discharge of an employee because, in crossing a picket line and working in a struck plant the employee refuses to join with the union in organizational activity, the employee is restrained and coerced in the exercise of the right to refrain from engaging in union activity. The employee is no less restrained and coerced by the union because the discharge is effectuated by the employer in accession to the union's demand.

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[24] *International Typographical Union,* 86 NLRB 951, 956. Thus Senator Taft summarized the section as requiring of unions, *vis a vis* their relations to employees, "You can persuade them; you can put up signs; you can conduct any form of propaganda you want to in order to persuade them, but you cannot, by threat of force or threat of *economic reprisal* prevent them from exercising their right to work." [Emphasis supplied.] 93 Cong. Rec. 4436; see also, 93 Cong. Rec. 4021, 4023; *National Maritime Union,* 78 NLRB 971, 982-987.

[25] *Sunset Line & Twine Co.,* 79 NLRB 1487; *Perry Norvell Co.,* 80 NLRB 225; *Smith Cabinet Mfg. Co.,* 81 NLRB 886; *North Electric Mfg. Co.,* 84 NLRB 136; *Colonial Hardwood Flooring Co., Inc.,* 84 NLRB 563; *Cory Corp.,* 84 NLRB 972.

[26] *Seamprufe, Inc.,* 82 NLRB 892; *H. M. Newman,* 85 NLRB 725.

[27] *Union Starch and Refining Co.,* 87 NLRB No. 137.

CONCLUSION

For the reasons stated it is respectfully submitted that a decree should issue enforcing the Board's order in full.

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NOVEMBER 1950.

APPENDIX A

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C. Supp. III, Secs. 151 *et seq.*), are as follows:

Rights of Employees

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).

Unfair Labor Practices

Sec. 8 (a) *It shall be an unfair labor practice for an employer*—(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7; * * * (3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided,* That nothing in this Act, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 8 (a) of this Act as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organiza-

tion is the representative of the employees as provided in section 9 (a), in the appropriate collective-bargaining unit covered by such agreement when made; and (ii) if, following the most recent election held as provided in section 9 (e) the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to authorize such labor organization to make such an agreement: *Provided further,* That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

(b) It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: *Provided,* That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein;

* * * * *

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure

to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

* * * * *

Sec. 9. * * *

(e) (1) Upon the filing with the Board by a labor organization, which is the representative of employees as provided in section 9 (a), of a petition alleging that 30 per centum or more of the employees within a unit claimed to be appropriate for such purposes desire to authorize such labor organization to make an agreement with the employer of such employees requiring membership in such labor organization as a condition of employment in such unit, upon an appropriate showing thereof the Board shall, if no question of representation exists, take a secret ballot of such employees, and shall certify the results thereof to such labor organization and to the employer.

* * * * *

Effective Date of Certain Changes

Sec. 102. No provision of this title shall be deemed to make an unfair labor practice any act which was performed prior to the date of the enactment of this Act which did not constitute an unfair labor practice prior thereto, and the provisions of section 8 (a) (3) and section 8 (b) (2) of the National Labor Relations Act as amended by this title shall not make an unfair labor practice the performance of any obligation under a collective-bargaining agreement entered into prior to the date of the enactment of this Act, or (in the case of an agreement for a period of not more than one year) entered into on or after such date of enactment, but prior to the effective date of this title, if the

performance of such obligation would not have constituted an unfair labor practice under section 8 (3) of the National Labor Relations Act prior to the effective date of this title, unless such agreement was renewed or extended subsequent thereto.

Sec. 103. No provisions of this title shall affect any certification of representatives or any determination as to the appropriate collective bargaining unit, which was made under section 9 of the National Labor Relations Act prior to the effective date of this title until one year after the date of such certification or if, in respect of any such certification, a collective-bargaining contract was entered into prior to the effective date of this title, until the end of the contract period or until one year after such date, whichever first occurs.

Sec. 104. The amendments made by this title shall take effect sixty days after the date of the enactment of this Act, * * *

APPENDIX B

UNION EXHIBIT No. 1

Collective Bargaining Agreement

Between

California Processors and Growers, Inc.,

and

California State Council of Cannery Unions,
American Federation of Labor

as

Adopted June 10, 1941
Amended January 26, 1942
Amended July 10, 1943
Amended May 23, 1945
Amended November 19, 1945
Amended May 21, 1946
Amended May 20, 1947

* * * * *

Section IV

EMPLOYMENT CONDITIONS

(a) All employees performing work listed in Appendix A hereof shall be and shall remain members of the local in good standing as a condition of continued employment.

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Section XII

ADJUSTMENT OF GRIEVANCES

(a) It is the intention of the parties to adjust any and all claims, disputes or grievances arising hereunder,

by resort to the procedures provided in this Section, and it is therefore agreed that during the life of this Agreement, there shall be no cessation of work, whether by strike, walkout, lockout, intentional slow-down or other interference with production, provided the parties hereto comply with the terms and conditions of this Agreement and follow the adjustment procedures of this Section. Violation of this provision shall constitute grounds for termination of the collective bargaining agreement by the aggrieved party, but said party may, without waiver of said breach and right to terminate, submit the violation to the Adjustment Board for appropriate action.

* * * * *

Section XV

Term of Agreement

(a) The exclusive collective bargaining relationship provided by this Agreement and effective from and after March 1st, 1947 shall continue without expiration date until:

1. Terminated by written notice served by either party upon the other as provided in Paragraph (a) Section XII or in Paragraph (b) of this Section, or

2. Terminated by written notice served by either party upon the other as provided in Section XVI (b) 2.

(b) The anniversary date of this Agreement shall be March 1st of each year. If either party desires to terminate the exclusive collective bargaining relationship and this Agreement on any anniversary date, written notice to such effect shall be served between February 16th and March 1st of the year then current.

Section XVI

Procedure for Modification

(a) In the event either party desires to modify any of the terms of this Agreement or to establish new or different terms or conditions, written notice specifying in exact language the changes desired shall be served within the sixteen (16) day period December 16th to December 31st inclusive. The months of January and February following service of the above notice shall be devoted to negotiations and if the parties are in complete agreement all changes mutually agreed upon shall become effective on March 1st and shall remain effective for not less than twelve (12) months thereafter.

(b) If any of the matters under negotiation are still in dispute on March 1st, either of the following actions may be taken:

1. The parties may mutually agree upon an additional period or periods of negotiation and the changes finally agreed upon shall become effective on a mutually acceptable date and shall remain effective until at least the following March 1st.

2. Either party by written notice on or after March 1st may terminate the collective bargaining relationship and this Agreement.

(c) If, during the December 16th to December 31st period, neither party serves notice of a desire to modify any of the terms of this Agreement or to establish new or different terms or conditions, then this Agreement shall continue for an additional period of at least twelve (12) months after the next March 1st anniversary date.

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